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Ninth Supplement to Memorandum 94-11

**Administrative Adjudication: Exemption Request of Department of Real Estate**

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The Department of Real Estate has requested exemption for several of its hearings, listed in the attached Exhibit p. 1. The text of the provisions in question is set out at Exhibit pp. 2-14.

**Bus. & Prof. Code § 10086. Restraining order**

Section 10086 enables the Real Estate Commissioner to issue a restraining order against a person under the real estate licensing act, with a short fuse opportunity for a hearing. See Exhibit pp. 2-3.

The staff agrees that these statutory time periods should not be repealed in connection with enactment of the revised administrative procedure act. The act recognizes that contrary express statutes such as this prevail over the general provisions of the administrative procedure act. Section 612.150. The staff would merely make a conforming change in Section 10086 to correct the cross-reference to the administrative procedure act.

**Bus. & Prof. Code § 11018.3. Denial order**

Business and Professions Code Section 11018.3 provides for a short fuse hearing for a subdivider objecting to a denial order. See Exhibit p. 3. Again, the statutory scheme evidences a legislative policy to expedite the hearing and decision in such a case, and the staff would leave this provision intact as part of the administrative procedure act revision process.

**Bus. & Prof. Code § 11019. Cease and desist order**

Business and Professions Code Section 11019 parallels Section 10086 in requiring a short fuse hearing after a cease and desist order under the subdivided lands act. See Exhibit pp. 3-4. Again, the staff would leave this provision in place.

**Bus. & Prof. Code §§ 10470-10481. Real Estate Recovery Account**

The Department of Real Estate notes that the Real Estate Recovery Program, Business and Professions Code §§ 10470-10481, could be impacted by the administrative procedure act. Those provisions are a self-contained procedure for recovering from a state fund for an unsatisfied judgment against a broker, and

sanctioning the broker. See Exhibit pp. 4-14. The provisions do not require a hearing, although they do involve an administrative decision by the Real Estate Commissioner who must make determinations of recovery rights and sanctions. The administrative procedure act would not apply in this situation. See Section 641.110 (proposed revision discussed in Memorandum 94-13). The staff does not believe adjustment of either statute is required.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

**DEPARTMENT OF REAL ESTATE**

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(916) 227-0789



July 29, 1993

Law Revision Commission  
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File: \_\_\_\_\_

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NATHANIEL STERLING  
Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Suite D2  
Palo Alto, CA 94303-4739

Dear Mr. Sterling:

This is in response to your recent request to be notified about agency statutes which may be affected by your proposed administrative adjudication project. The Department of Real Estate has three statutory provision which call for accelerated hearings; Business and Professions Code Sections 10086, 11018.3 and 11019. In addition, the provisions of law relating to the Real Estate Recovery Account (Business and Professions Code Sections 10470 through 10480) could be impacted by your project.

We hope this information will be of assistance to you and if you have any questions, please contact me at (916) 227-0789.

Sincerely,

A handwritten signature in cursive script that reads "Larry Alamao".

LARRY A. ALAMA  
Attorney in Charge

LAA/lz

Exhibit

Statutes on Department of Real Estate

**Bus. & Prof. Code § 10086**

**10086. Restraining order**

(a) If the commissioner determines through an investigation that (1) a person has engaged or is engaging in an activity which is a violation of a provision of this part, other than a provision of Article 8 (commencing with Section 10249) of Chapter 3, or which is a violation of a regulation of the commissioner adopted for the purpose of implementing any provision of this part, other than a regulation adopted pursuant to a provision of Article 8 (commencing with Section 10249) of Chapter 3, or (2) a real estate broker has engaged in or is engaging in an activity which is a violation of a provision of Division 6 (commencing with Section 17000) of the Financial Code, and which is not exempt pursuant to paragraph (4) of subdivision (a) of Section 17006, the commissioner may direct the person to desist and refrain from such activity by issuance of an order specifying the nature of the activity and the factual and legal basis for his or her determination. The respondent to whom the order is directed shall immediately, upon receipt of the order, cease the activity described in the order.

(b) The respondent may, within 30 days after service of the order to desist and refrain, file a request for a hearing. If, with the request for hearing, the respondent also files a written verification that the order of the commissioner precludes him or her from further engaging in a substantial proportion of his or her business, the commissioner shall, within 10 days thereafter, file an action in superior court to restrain the respondent from continuing the activity or doing any act in furtherance thereof pending the completion of a hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

If the commissioner fails to bring the action in superior court within the time prescribed by this section, or if the court refuses to restrain the respondent pending the decision of the commissioner following the administrative hearing, the respondent may resume the activities in question pending the rendering of the decision of the commissioner following the administrative hearing.

**(c) The administrative hearing shall be commenced by the commissioner within 30 days after receipt of respondent's request unless the respondent agrees to a postponement. If the hearing is not commenced within 30 days after receipt of respondent's request or on the date to which continued with respondent's consent, or if the commissioner does not render a decision within 15 days after receipt of the proposed decision following the hearing, the order shall be deemed rescinded.**

**(d) The provisions of Section 11019, and not the provisions of this section, shall apply in the case of an activity which the commissioner determines to be in violation of Article 8 (commencing with Section 10249) of Chapter 3 or of a regulation of the commissioner for implementation of any provision of that article.**

### **Bus. & Prof. Code § 11018.3**

#### **11018.3. Objection to denial of report or denial of exemption; Hearing; Effect of failure to hold hearing**

**Any subdivider objecting to the denial of a public report or to denial by the commissioner of exemption from special regulation pursuant to Section 11000.5 may, within 30 days after receipt of the order of denial, file a written request for a hearing. The commissioner shall hold the hearing within 20 days thereafter unless the party requesting the hearing shall have requested a postponement. If the hearing is not held within 20 days after request for a hearing is received plus the period of any such postponement or if a proposed decision is not rendered within 45 days after submission and an order adopting or rejecting such proposed decision is not issued within 15 days thereafter, the order of denial shall be rescinded and a public report issued.**

### **Bus. & Prof. Code § 11019**

#### **11019. Violation of chapter; Desist order; Review of order; Procedure**

**(a) Whenever the commissioner determines from available evidence that a person has done any of the following, the commissioner may order the person to desist and refrain from those acts and omissions or from the further sale or lease of interests in the subdivision until the condition has been corrected:**

**(1) Has violated or caused the violation of any provision of this part or the regulations pertaining thereto.**

(2) Has violated or caused a violation of Section 17537, 17537.1, or 17539.1, in advertising or promoting the sale of subdivision interests.

(3) Has failed to fulfill representations or assurances with respect to the subdivision or the subdivision offering upon which the department relied in issuing a subdivision public report.

(4) Has failed to inform the department of material changes that have occurred in the subdivision or subdivision offering which have caused the subdivision public report to be misleading or inaccurate or which would have caused the department to deny a public report if the conditions had existed at the time of issuance.

(b) Upon receipt of such an order, the person or persons to whom the order is directed shall immediately discontinue activities in accordance with the terms of the order.

**(c) Any person to whom the order is directed may, within 30 days after service thereof upon him, file with the commissioner a written request for hearing to contest the order. The commissioner shall after receipt of a request for hearing assign the matter to the Office of Administrative Hearings to conduct a hearing for findings of fact and determinations of the issues set forth in the order. If the hearing is not commenced within 15 days after receipt of the request for hearing, or on the date to which continued with the agreement of the person requesting the hearing, or if the decision of the commissioner is not rendered within 30 days after completion of the hearing, the order shall be deemed to be vacated.**

(d) Service and proof of service of an order issued by the commissioner pursuant to this section may be made in a manner and upon such persons as prescribed for the service of summons in Article 3 (commencing with Section 415.10), Article 4 (commencing with Section 416.10) and Article 5 (commencing with Section 417.10) of Chapter 4 of Title 5 of Part 2, of the Code of Civil Procedure.

#### **Bus. & Prof. Code §§ 10470-10481**

##### **10470. Payment of additional license fees to Recovery Account**

If, on June 30 of any year, the balance remaining in the Recovery Account in the Real Estate Fund is less than two hundred thousand dollars (\$200,000), every licensed broker, when obtaining or renewing any broker license within four years thereafter, shall pay, in addition to the license fee, a fee of seven dollars

(\$7), and every licensed salesperson, when obtaining or renewing such license within four years thereafter, shall pay, in addition to the license fee, a fee of four dollars (\$4). The fees from both broker and salesperson licensees shall be paid into the State Treasury and credited to the Recovery Account.

**10470.1. Transfer of surplus funds to and from Recovery Account**

(a) In addition to the amount paid into the Recovery Account as set forth in Section 10450.6, the Real Estate Commissioner may authorize the transfer from the Real Estate Fund to the Recovery Account of any amounts as are deemed necessary.

(b) If the balance remaining in the Recovery Account contains more than four hundred thousand dollars (\$400,000), the commissioner may authorize the transfer of all or part of the surplus amount into the Real Estate Fund.

(c) The commissioner may authorize the return to the Recovery Account of all or any amount previously transferred to the Real Estate Fund under this section.

**10471. Application for payment from Recovery Account upon finality of judgment against licensee**

(a) When an aggrieved person obtains a final judgment in a court of competent jurisdiction or an arbitration award which includes findings of fact and conclusions of law rendered in accordance with the rules established by the American Arbitration Association or another recognized arbitration body, and in accordance with Sections 1281 to 1294.2, inclusive, of the Code of Civil Procedure where applicable, and where the arbitration award has been confirmed and reduced to judgment pursuant to Section 1287.4 of the Code of Civil Procedure, against a defendant based upon the defendant's fraud, misrepresentation, or deceit, made with intent to defraud, or conversion of trust funds arising directly out of any transaction not in violation of Section 10137 or 10138 in which the defendant, while licensed under this part, performed acts for which that license was required, the aggrieved person may, upon the judgment becoming final, file an application with the Department of Real Estate for payment from the Recovery Account, within the limitations specified in Section 10474, of the amount unpaid on the judgment which represents an actual and direct loss to the claimant in the transaction.

(b) The application shall be delivered in person or by certified mail to an office of the department not later than one year after the judgment has become final.

(c) The application shall be made on a form prescribed by the department, verified by the claimant, and shall include the following:

(1) The name and address of the claimant.

(2) If the claimant is represented by an attorney, the name, business address, and telephone number of the attorney.

(3) The identification of the judgment, the amount of the claim and an explanation of its computation.

(4) A detailed narrative statement of the facts in explanation of the allegations of the complaint upon which the underlying judgment is based.

(5) A statement by the claimant, signed under penalty of perjury, that the complaint upon which the underlying judgment is based was prosecuted conscientiously and in good faith. As used in this section, "conscientiously and in good faith" means that no party potentially liable to the claimant in the underlying transaction was intentionally and without good cause omitted from the complaint, that no party named in the complaint who otherwise reasonably appeared capable of responding in damages was dismissed from the complaint intentionally and without good cause, and that the claimant employed no other procedural tactics contrary to the diligent prosecution of the complaint in order to provide access to the Recovery Account.

(6) The name and address of the judgment debtor or, if not known, the names and addresses of persons who may know the judgment debtor's present whereabouts.

(7) The following representations and information from the claimant:

(A) That he or she is not a spouse of the judgment debtor nor a personal representative of the spouse.

(B) That he or she has complied with all of the requirements of this chapter.

(C) That the judgment underlying the claim meets the requirements of subdivision (a).

(D) A description of searches and inquiries conducted by or on behalf of the claimant with respect to the judgment debtor's assets liable to be sold or applied to satisfaction of the judgment, an itemized valuation of the assets discovered, and the results of actions by the claimant to have the assets applied to satisfaction of the judgment.

(E) That he or she has diligently pursued collection efforts against other judgment debtors and all other persons liable to the claimant in the transaction that is the basis for the underlying judgment.

(F) That the underlying judgment and debt have not been discharged in bankruptcy, or, in the case of a bankruptcy proceeding that is open at the time of the filing of the application, that the judgment and debt have been declared to be nondischargeable.

(G) That the application was mailed or delivered to the department no later than one year after the underlying judgment became final.

(d) The application form shall include detailed instructions with respect to documentary evidence, pleadings, court rulings, the products of discovery in the underlying litigation, and a notice to the applicant of his or her obligation to protect the underlying judgment from discharge in bankruptcy, to be appended to the application.

#### **10471.1. Notice to judgment debtor**

(a) The claimant shall serve a copy of the notice prescribed in subdivision (c) upon the judgment debtor by personal service or by registered mail, together with a copy of the application.

(b) If the judgment debtor holds a current license issued by the department, service of the notice and a copy of the application may be made by registered mail addressed to the judgment debtor at the latest business or residence address on file with the department. If the judgment debtor does not hold a current license issued by the department and personal service cannot be effected through the exercise of reasonable diligence, the claimant shall serve the judgment debtor by one publication of the notice in each of two successive weeks in a newspaper of general circulation published in the county in which the judgment debtor was last known to reside.

(c) The notice served upon the judgment debtor shall include the following statement:

"NOTICE: Based upon a judgment entered against you in favor of \_\_\_\_\_ (name of claimant), application for payment from the Recovery Account of the Real Estate Fund is being made to the Department of Real Estate.

"If payment is made from the Recovery Account, all licenses and license rights that you have under the Real Estate Law will be automatically suspended

on the date of payment and cannot be reinstated until the Recovery Account has been reimbursed for the amount paid plus interest at the prevailing rate.

"If you wish to contest payment by the Real Estate Commissioner, you must file a written response to the application addressed to the Department of Real Estate at \_\_\_\_\_ within 30 days after mailing, delivery, or publication of this notice and send a copy of that response to the claimant. If you fail to do so, you will have waived your right to present your objections to payment."

(d) If a judgment debtor fails to file a written response to the application with the department within 30 days after personal service, mailing, or final publication of the notice, the judgment debtor shall not thereafter be entitled to notice of any action taken or proposed to be taken by the commissioner with respect to the claim.

#### **10471.2. Deficiencies in applications**

(a) If the commissioner determines that the application as submitted by the claimant fails to comply substantially with the requirements of Section 10471 or with the requirements of a regulation adopted by the commissioner under authority of Section 10080, the commissioner shall, within 15 days after receipt of the application, mail an itemized list of deficiencies to the claimant.

(b) The time within which the commissioner is required to act under Section 10471.3 shall be measured from the date of receipt by the department of an application that is substantially complete. In the event of an irreconcilable dispute between the claimant and the commissioner on the question of whether the application is substantially complete, the claimant may immediately file the claim with the court pursuant to Section 10472.

#### **10471.3. Decision by commissioner; Settlement offers**

(a) The commissioner shall render a final written decision on the application within 90 days after a completed application has been received unless the claimant agrees in writing to extend the time within which the commissioner may render a decision. If the commissioner fails to render a written decision in response to the claim within 90 days after its receipt or within the extended period agreed to by the claimant, the claim shall be deemed to have been denied by the commissioner on the final day for rendering the decision.

(b) The commissioner may deny or grant the application or may enter into a compromise with the claimant to pay less in settlement than the full amount of

the claim. If the claimant refuses to accept a settlement of the claim offered by the commissioner, the written decision of the commissioner shall be to deny the claim or it shall be deemed denied if a written decision is not rendered within the time specified in subdivision (a). Evidence of settlement offers and discussions between the commissioner and the claimant shall not be competent evidence in judicial proceedings undertaken by the claimant pursuant to Section 10472.

#### **10471.4. Investigatory powers of department**

In its consideration and investigation of an application, the department shall have recourse to all appropriate means of investigation and discovery available to it under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

#### **10471.5. Notice of commissioner's decision**

(a) The commissioner shall give notice of a decision rendered with respect to the claim to the claimant and to a judgment debtor who has filed a timely response to the claim in accordance with Section 10471.1.

(b) If the application is denied, the notice to the claimant and judgment debtor shall include the following:

"Claimant's application has been denied. If the claimant wishes to pursue the application in court, the claimant must file the application in the court in which the underlying judgment was entered not later than six months after receipt of this notice, pursuant to Section 10472 of the Business and Professions Code."

(c) If the decision of the commissioner is to make a payment to the claimant out of the Recovery Account, the following notice shall be given to the judgment debtor along with a copy of the decision of the commissioner:

"The decision of the Real Estate Commissioner on the claim of \_\_\_\_\_ is to pay \$\_\_\_\_\_ from the Recovery Account. A copy of that decision is enclosed.

"Pursuant to Section 10475 of the Business and Professions Code, all of your licenses and license rights under the Real Estate Law will be suspended effective on the date of the payment, and you will not be eligible for reinstatement of any license issued under authority of the Real Estate Law until you have reimbursed the Recovery Account for this payment plus interest at the prevailing legal rate."

"If you desire a judicial review of the suspension of your licenses and license rights, you may petition the superior court in the county in which the judgment which is the basis of this claim was rendered, for a writ of mandamus. To be

timely, the petition must be filed with the court within 30 days of receipt of this notice."

#### **10471.6. Proration proceedings**

At any time prior to the rendering of a decision on a claim if the commissioner determines that the aggregate valid claims of all aggrieved persons against that licensee are likely to exceed the limits of liability in Section 10474, the commissioner shall, in lieu of further administrative proceedings, initiate a proration proceeding pursuant to Section 10474.5 in any court of competent jurisdiction in which a judgment meeting the requirements of Section 10471 has been entered against the licensee.

#### **10472. Application to court by claimant; Notice**

(a) A claimant against whom the commissioner has rendered a decision denying an application pursuant to Section 10471 may, within six months after receipt of notice of the denial, file a verified application in the court in which judgment was entered in favor of the claimant, for an Order Directing Payment Out of the Recovery Account based upon the grounds set forth in the claimant's application to the commissioner.

(b) A copy of the verified application shall be served upon the commissioner and upon the judgment debtor. A certificate or affidavit of service shall be filed by the claimant with the court. Service on the commissioner may be made by registered mail addressed to the headquarters office of the department. Service upon a judgment debtor may be made in accordance with Section 10471.1. The notice served upon the judgment debtor shall read as follows:

"NOTICE: An application has been filed with the court for a payment from the Recovery Account that was previously denied by the Real Estate Commissioner.

"If the Department of Real Estate makes a payment from the Recovery Account pursuant to court order, all of your licenses and license rights under the Real Estate Law will be automatically suspended until the Recovery Account has been reimbursed for the amount paid plus interest at the prevailing rate.

"If you wish to defend in court against this claim, you must file a written response with the court within 30 days after having been served with a copy of the application. If you do not file a written response, you will have waived your right to defend against the claim."

### **10472.1. Response to application; Hearing**

(a) The commissioner and the judgment debtor shall each have 30 days after being served with the application in which to file a written response. The court shall thereafter set the matter for hearing upon the petition of the claimant. The court shall grant a request of the commissioner for a continuance of as much as 30 days and may, upon a showing of good cause by any party, continue the hearing for such time as the court deems appropriate.

(b) At the hearing, the claimant shall be required to establish compliance with the requirements of Section 10471.

(c) If the judgment debtor fails to file a written response to the application, the claim may be compromised or settled by the commissioner at any time during the court proceedings and the court shall, upon joint petition of the applicant and the commissioner, issue an order directing payment out of the Recovery Account.

### **10473. Determination as to valid cause of action; Defenses; Effect of judgment in underlying action; Motion to dismiss**

Whenever the court proceeds upon an application under Section 10472, it shall order payment out of the Recovery Account only upon a determination that the aggrieved party has a valid cause of action within the purview of Section 10471, and has complied with Section 10472.

The commissioner may defend any such action on behalf of the Recovery Account and shall have recourse to all appropriate means of defense and review, including examination of witnesses and the right to relitigate any issues material and relevant in the proceeding against the Recovery Account which were determined in the underlying action on which the judgment in favor of the applicant was based. If the judgment in favor of the applicant was by default, stipulation, consent, or pursuant to Section 594 of the Code of Civil Procedure, or whenever the action against the licensee was defended by a trustee in bankruptcy, the applicant shall have the burden of proving that the cause of action against the licensee was for fraud, misrepresentation, deceit, or conversion of trust funds. Otherwise, the judgment shall create a rebuttable presumption of the fraud, misrepresentation, deceit, or conversion of trust funds by the licensee, which presumption shall affect the burden of producing evidence.

The commissioner may move the court at any time to dismiss the application when it appears there are no triable issues and the petition is without merit. The motion may be supported by affidavit of any person or persons having

knowledge of the facts, and may be made on the basis that the petition, and the judgment referred to therein, does not form the basis for a meritorious recovery claim within the purview of Section 10471; provided, however, the commissioner shall give written notice at least 10 days before the motion.

The commissioner may, subject to court approval, compromise a claim based upon the application of an aggrieved party. The commissioner shall not be bound by any compromise or stipulation of the judgment debtor.

#### **10473.1. Defense by judgment debtor**

The judgment debtor may defend an action against the Recovery Account on his or her own behalf and shall have recourse to all appropriate means of defense and review, including examination of witnesses. All matters, including, but not limited to, the issues of fraud, misrepresentation, deceit, or conversion of trust funds, finally adjudicated in the underlying action are conclusive as to the judgment debtor and the applicant in the proceeding against the Recovery Account.

#### **10474. Maximum liability of Recovery Account**

Notwithstanding any other provision of this chapter and regardless of the number of persons aggrieved or parcels of real estate involved in a transaction or the number of judgments against a licensee, the liability of the Recovery Account shall not exceed the following amounts:

(a) For causes of action which occurred on or after July 1, 1964, and prior to January 1, 1975, ten thousand dollars (\$10,000) for any one transaction and twenty thousand dollars (\$20,000) for any one licensee.

(b) For causes of action which occurred on or after January 1, 1975, and prior to January 1, 1980, ten thousand dollars (\$10,000) for any one transaction and forty thousand dollars (\$40,000) for any one licensee.

(c) For causes of action which occurred on or after January 1, 1980, twenty thousand dollars (\$20,000) for any one transaction and one hundred thousand dollars (\$100,000) for any one licensee.

(d) When multiple licensed real estate personnel are involved in a transaction and the individual conduct of two or more of the licensees results in a judgment meeting the requirements of subdivision (a) of Section 10471, the claimant may seek recovery from the Recovery Account based on the judgment against any of

the licensed real estate personnel, subject to the limitations of this section and subparagraph (E) of paragraph (7) of subdivision (c) of Section 10471.

**10474.5. Proration where claims exceed maximum liability of Recovery Account**

If the amount of liability of the Recovery Account as provided for in Section 10474 is insufficient to pay in full the valid claims of all aggrieved persons by whom claims have been filed against any one licensee, the amount shall be distributed among them in the ratio that their respective claims bear to the aggregate of the valid claims, or in any other manner as the court deems equitable. Distribution of any moneys shall be among the persons entitled to share therein, without regard to the order of priority in which their respective judgments may have been obtained or their claims have been filed. Upon petition of the commissioner, the court may require all claimants and prospective claimants against one licensee to be joined in one action, to the end that the respective rights of all claimants to the Recovery Account may be equitably adjudicated and settled.

**10475. License suspension and reinstatement; Effect of discharge in bankruptcy**

Should the commissioner pay from the Recovery Account any amount in settlement of a claim or toward satisfaction of a judgment against a licensed broker or salesperson, the license of the broker or salesperson shall be automatically suspended upon the date of payment from the Recovery Account. No broker or salesperson shall be granted reinstatement until he or she has repaid in full, plus interest at the prevailing legal rate applicable to a judgment rendered in any court of this state, the amount paid from the Recovery Account on his or her account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this chapter.

**10476. Satisfaction of unpaid claims upon deposit of sufficient money in Recovery Account**

If, at any time, the money deposited in the Recovery Account is insufficient to satisfy any duly authorized claim or portion thereof, the commissioner shall, when sufficient money has been deposited in the Recovery Account, satisfy the unpaid claims or portions thereof, in the order that the claims or portions thereof were originally filed, plus accumulated interest at the rate of 4 percent a year.

**10477. Deposit of funds received by commissioner**

Any sums received by the commissioner pursuant to any provisions of this chapter shall be deposited in the State Treasury and credited to the Recovery Account.

**10478. Filing of false document; Punishment**

It shall be unlawful for any person or the agent of any person to file with the commissioner any notice, statement, or other document required under the provisions of this chapter which is false or untrue or contains any willful, material misstatement of fact. Such conduct shall constitute a public offense punishable by imprisonment in the county jail for a period of not more than one year or a fine of not more than one thousand dollars (\$1,000), or both.

**10479. Subrogation and assignment of judgment creditor's rights to commissioner**

When, the commissioner has paid from the Recovery Account any sum to the judgment creditor, the commissioner shall be subrogated to all of the rights of the judgment creditor and the judgment creditor shall assign all of his or her right, title, and interest in the judgment to the commissioner and any amount and interest so recovered by the commissioner on the judgment shall be deposited to the Recovery Account.

**10480. Waiver by failure to comply**

The failure of an aggrieved person to comply with all of the provisions of this chapter shall constitute a waiver of any rights hereunder.

**10481. Effect of chapter on disciplinary proceedings**

Nothing in this chapter limits the authority of the commissioner to take disciplinary action against any licensee for a violation of the Real Estate Law, or of Chapter 1 (commencing with Section 11000) of Part 2, or of the rules and regulations of the commissioner; nor shall the repayment in full of all obligations to the Recovery Account by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to the Real Estate Law.